IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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W.T.R. No.38 to 39 of 1990
Date of Decision:27.11.2006

The Commissioner of Wealth Tax, Jalandhar
.....Petitioner

Vs.

Shri Rakesh Kumar Jairath, Jalandhar
.....Respondent

CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Dr. N.L.Sharda, Advocate for the revenue.

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JUDGMENT

Following question of law has been referred for the opinion of this Court by the Income Tax Appellate Tribunal, Amritsar Bench, Amritsar arising out of its order dated 25.11.1983 in WTA Nos.45 and 46(ASR)/ 1983, for the assessment years 1976-77 and 1977-78:-

> "Whether, on the facts and in the circumstances of the case, the ITAT was right in law in holding that erroneous order passed during supplementary proceedings under section 17 of the Wealth-tax Act repeating the error committed while completing the original assessment could not be the subject matter of revision under section 25(2) of the W.T.Act, because of limitation being available from the date of original assessment order?"

Original assessment for assessment years 1976-77 and 1977-78 was framed on 16.6.1978. Re-assessment order was passed on 28.3.1981. The Commissioner exercising power under Section 25 of the Wealth Tax Act, 1957 (for short, `the Act') revised the order of re-assessment.

Aggrieved against the order in revision, the assessee went in appeal before the Tribunal. The Tribunal accepted the plea of the assessee that power of revision could not be exercised by taking limitation from the date of order of re-assessment in a case where the mistake sought to be corrected existed in the original order itself.

Section 25 of the Wealth Tax Act, 1955, as existed at the relevant time, is as under:

"25. (1) The Commissioner may, either of his own motion or an application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such inquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, pass such order thereon, not being an order prejudicial to the assessee, as the Commissioner thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section in any case--

(a) where an appeal against the order lies to the Appellate Assistant Commissioner [or to the Commissioner (Appeals) or to the Appellate Tribunal, the time within which such appeal can be made has not expired or in the case of an appeal [to the Commissioner (Appeals)] or to the Appellate Tribunal the assessee has not waived his right of appeal;

(b) where the order is the subject of an appeal before the Appellate Assistant Commissioner [or the Commissioner (Appeals) or the Appellate Tribunal;

(c) where the application is made by the assessee for such revision unless--

(i) the application is accompanied by a fee of twenty-five rupees; and

(ii) the application is made within one year from the date of the order sought to be revised or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period; and

(d) where the order is sought to be revised by the

Commissioner of his own motion, if such order is made more than one year previously.

Explanation: For the purposes of this sub-section,--

(a) the Appellate Assistant Commissioner shall be deemed to be an authority subordinate to the Commissioner; and

(b) an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(2) Without prejudice to the provisions contained in sub-section (1), the Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by a Wealth-tax Officer is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such inquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

[(3) No order shall be made under sub-section (2) after the expiry of two years from the date of the order sought to be revised.

(4) Notwithstanding anything contained in sub-section (3), an order in revision under sub-section (2) may be passed at any time in the case of an order which has been passed in consequence of, or to give effect to, any finding or direction contained in an order of the Appellate Tribunal, the High Court or the Supreme Court.

Explanation: In computing the period of limitation for the purposes of sub-section (3), the time taken in giving an opportunity to the assessee to be re-heard under the proviso to section 39 and any period during which any

> proceeding under this section is stayed by an order or injunction of any court shall be excluded."

We find that the similar issue has been gone into by this Court in (2002) 255 ITR 220, **Vipan Khanna Vs. Commissioner of Income- Tax and Others**, wherein, while relying upon a judgment of Hon'ble the Supreme Court in **Commissioner of Income Tax Vs. Sun Engineering Works P. Ltd.,** (1992) 198 ITR 297, it was held that it was not correct that once valid proceedings under Section 147 of the Act are started, the whole assessment proceedings start afresh. What is set aside is, thus, only the previous underassessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not affect the operative force of the original assessment, particularly, if it has acquired finality, and the original order retains both its character and identity. The relevant extract from the judgment in **Vipan Khanna's Case (supra)** is as under:-

> "We may also mention that the interpretation placed on the observations of the Surpeme Court of **V. Jaganmohan Rao's case** [1970] 75 ITR 373 by the Deputy Commissioner in his order dated October 26, 1998, is not correct. He was not correct in holding that once valid proceedings under section 147 are started the whole assessment proceedings start afresh. This has been explained by the apex court itself in **Sun Engineering Works Pvt. Ltd.'s case** [1992] 198 ITR 297, at page 319, of the report as under:
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> > "The principle laid down by this court in **V.Jaganmohan Rao's case**, therefore, is only to the extent that once an assessment is validly reopened by issuance of a notice under section 22(2) of the 1922 Act (corresponding to section 148 of the Act), the previous underassessment is set aside and the Income-tax Officer has the jurisdiction and duty to levy tax on the entire income that had escaped assessment during the previous year. What is set aside is, thus, only the previous underassessment and not the original assessment proceedings. An order made in relation to the escaped turnover does not affect the operative force of the

original assessment, particularly, if it has acquired finality, and the original order retains both its character and identity. It is only in cases of `underassessment' based on clauses (a) to (d) of *Explanation* 1 to section 147, that the assessment of tax due has to be recomputed on the entire taxable income. The judgment in **V.Jaganmohan Rao's case** [1970] 75 ITR 373 (SC), therefore, cannot be read to imply as laying down that, in the reassessment proceedings validly initiated, the assessee can seek reopening of the whole assessment and claim credit in respect of items finally concluded in the original assessment. The assessee cannot claim recomputation of the income or redoing of an assessment and be allowed a claim which he either failed to make or which was otherwise rejected at the time of original assessment which has since acquired finality. Of course, in the reassessment proceedings, it is open to an assessee to show that the income alleged to have escaped assessment has in truth and in fact not escaped assessment but that the same had been shown under some inappropriate head in the original return, but to read the judgment in **V.Jaganmohan Rao's case** [1970] 75 ITR 373 (SC), as laying down that reassessment wipes out the original assessment and that reassessment is not only confined to `escaped assessment' or `underassessment' but to the entire assessment for the year and starts the assessment proceedings de novo giving the right to an assessee to reagitate matters which he had lost during the original assessment proceedings, which had acquired finality, is not only erroneous but also against the phraseology of section 147 of the Act and the object of reassessment proceedings. Such an interpretation would be reading that judgment totally out of context in which the questions arose for decision in that case. It is neither

> desirable nor permissible to pick out a work or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete `law' declared by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this court. A decision of this court takes its colour from the questions involved in the case in which it is rendered and, while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this court, to support their reasonings." (emphasis supplied)

The judgment of Hon'ble the Supreme Court in **Sun Engineering Works' Case (supra)** was further followed by Hon'ble the Supreme Court in (1993) 200 ITR 320, **Chettinad Corporation P. Ltd. Vs. Commissioner of Income-Tax.** Following the enunciation of law as laid down in the judgments referred to above, the only conclusion possible, in the facts and circumstances of the case, would be that in case the issues on which the revisional power is sought to be exercised by the Commissioner under Section 25 of the Act were subject matter of re-assessment proceedings, the limitation to revise the order will commence from the date of re-assessment order, otherwise the same would be from the date of order originally passed.

The reference is thus answered in the manner indicated above.

(ADARSH KUMAR GOEL)
JUDGE

November 27 , 2006 **(RAJESH BINDAL)**
renu **JUDGE**